HOUSE BILL 647

Unofficial Copy 1998 Regular Session
J3 8lr1060
CF 8lr1882

By: **Delegates Dewberry, Malone, D. Murphy, T. Murphy, and McHale**
Introduced and read first time: February 9, 1998
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Health - Certificate of Need - Reformation of Regulation**

3 FOR the purpose of reforming health care certificate of need regulation by expanding
4 the circumstances when a certificate of need is not required; defining certain
5 terms; requiring the Secretary to adopt quality of care standards for certain
6 health care services; providing for the oversight and enforcement of quality of
7 care standards; providing that certain information submitted by a hospital is
8 confidential and not discoverable as evidence in a civil action; providing for a
9 delayed effective date for this Act; providing for the application of certain
10 provisions of this Act; and generally relating to certificate of need regulation.

11 BY adding to
12 Article - Health - General
13 Section 19-101(j), (k), and (l)
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 1997 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article - Health - General
18 Section 19-115, 19-308, and 19-309
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 1997 Supplement)

21 Preamble

22 WHEREAS, It is unnecessary and burdensome to require certificate of need
23 regulation for certain new health care services when these services can be performed
24 within the scope of the existing health care facility's license and do not increase costs
25 to the health care system; and

26 WHEREAS, It is unnecessary and burdensome to require certificate of need
27 regulation for the relocation of existing beds and services within a health care
28 facility's primary service area or the relocation of existing beds and services between
29 existing facilities operated under a multifacility provider; and

1 WHEREAS, Cost containment of such services is already being achieved
2 through hospital rate regulation and managed care delivery systems and lower prices
3 to the consumer can be assured by requiring that certain savings accrue to the health
4 care system; and

5 WHEREAS, Certain regulated services, including cardiac surgery, can be safely
6 provided in many community hospitals under the well-defined quality of care
7 standards approved by the American College of Cardiology and the American College
8 of Surgeons; and

9 WHEREAS, Oversight of certain regulated services is more appropriately
10 focused on establishing and enforcing appropriate standards for quality of care; and

11 WHEREAS, The regulation of cardiac surgery should be reoriented to focus on
12 establishing and enforcing appropriate standards for quality of care, which can then
13 serve as a model for a reorientation of the regulation of other health care services in
14 the future; and

15 WHEREAS, Certificate of need regulation of health care facilities is appropriate
16 and should be continued for major facility changes such as new health care facilities,
17 new hospital beds, and new operating rooms; now, therefore,

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Health - General**

21 19-101.

22 (J) "MULTIFACILITY PROVIDER" MEANS A LEGAL ENTITY THAT:

23 (1) OWNS, DIRECTLY OR INDIRECTLY, AT LEAST 50 PERCENT OF THE
24 STOCK OR OTHER CAPITAL OR MEMBERSHIP INTEREST IN MORE THAN ONE HEALTH
25 CARE FACILITY IN THE STATE; OR

26 (2) IS OWNED BY AN ENTITY THAT OWNS, DIRECTLY OR INDIRECTLY, AT
27 LEAST 50 PERCENT OF THE STOCK OR OTHER CAPITAL OR MEMBERSHIP INTEREST IN
28 MORE THAN ONE HEALTH CARE FACILITY IN THE STATE.

29 (K) "PRIMARY SERVICE AREA" MEANS THE AREA, DEFINED BY ZIP CODE
30 AREAS, WITHIN WHICH PATIENTS ADMITTED TO A HOSPITAL OR RELATED
31 INSTITUTION RESIDE THAT COMPRISES THE FIRST 60 PERCENT OF THE PATIENTS
32 ADMITTED TO THE HOSPITAL OR RELATED INSTITUTION DURING THE MOST RECENT
33 12-MONTH PERIOD THAT:

34 (1) IS DETERMINED BY AGGREGATING ZIP CODE AREAS IN A SEQUENCE
35 BEGINNING WITH THE ZIP CODE AREA IN WHICH THE LARGEST NUMBER OF
36 ADMITTED PATIENTS RESIDE AND ENDING WITH THE ZIP CODE AREA IN WHICH THE
37 SMALLEST NUMBER OF ADMITTED PATIENTS RESIDE; AND

1 (2) INCLUDES ANY ADDITIONAL ZIP CODE AREAS:

2 (I) THAT ARE CONTIGUOUS TO THE ZIP CODE AREAS IN
3 PARAGRAPH (1) OF THIS SUBSECTION; AND

4 (II) FROM WHICH AT LEAST 50 PERCENT OF THE ADMISSIONS OF
5 RESIDENTS IN THOSE ZIP CODE AREAS TO ALL HOSPITALS OR RELATED
6 INSTITUTIONS IN THE STATE WERE TO THAT HOSPITAL OR RELATED INSTITUTION.

7 (L) "SPECIAL SERVICES" MEAN HEALTH CARE SERVICES WHICH THE
8 SECRETARY DEEMS CRITICAL TO THE PATIENTS' LIFE OR HEALTH, INCLUDING BUT
9 NOT NECESSARILY LIMITED TO OPEN HEART SURGERY.

10 19-115.

11 (a) (1) In this section the following words have the meanings indicated.

12 (2) "Health care service" means any clinically-related patient service
13 including a medical service under paragraph (3) of this subsection.

14 (3) "Medical service" means:

15 (i) Any of the following categories of health care services:

16 1. Medicine, surgery, gynecology, addictions;

17 2. Obstetrics;

18 3. Pediatrics;

19 4. Psychiatry;

20 5. Rehabilitation;

21 6. Chronic care;

22 7. Comprehensive care;

23 8. Extended care;

24 9. Intermediate care; or

25 10. Residential treatment; or

26 (ii) Any subcategory of the rehabilitation, psychiatry,
27 comprehensive care, or intermediate care categories of health care services for which
28 need is projected in the State health plan.

29 (b) The Commission may set an application fee for a certificate of need for
30 facilities not assessed a user fee under § 19-122 of this subtitle.

1 (c) The Commission shall adopt rules and regulations for applying for and
2 issuing certificates of need.

3 (d) (1) The Commission may adopt, after October 1, 1983, new thresholds or
4 methods for determining the circumstances or minimum cost requirements under
5 which a certificate of need application must be filed. The Commission shall study
6 alternative approaches and recommend alternatives that will streamline the current
7 process, and provide incentives for management flexibility through the reduction of
8 instances in which applicants must file for a certificate of need.

9 (2) The Commission shall conduct this study and report to the General
10 Assembly by October 1, 1985.

11 (e) (1) A person shall have a certificate of need issued by the Commission
12 before the person develops, operates, or participates in any of the following health
13 care projects for which a certificate of need is required under this section.

14 (2) A certificate of need issued prior to January 13, 1987 may not be
15 rendered wholly or partially invalid solely because certain conditions have been
16 imposed, if an appeal concerning the certificate of need, challenging the power of the
17 Commission to impose certain conditions on a certificate of need, has not been noted
18 by an aggrieved party before January 13, 1987.

19 (f) A certificate of need is required before a new health care facility is built,
20 developed, or established.

21 (g) (1) A certificate of need is required before a health care facility is moved
22 to another site.

23 (2) This subsection does not apply if:

24 (i) The Commission adopts limits for relocations and the proposed
25 relocation does not exceed those limits; [or]

26 (ii) The relocation is the result of a partial or complete replacement
27 of an existing hospital or related institution, as defined in § 19-301 of this title, and
28 the relocation is to another part of the site or immediately adjacent to the site of the
29 existing hospital or related institution OR TO A SITE WITHIN THE PRIMARY SERVICE
30 AREA OF THE EXISTING MARYLAND HOSPITAL OR RELATED INSTITUTION; OR

31 (III) BEDS OR SERVICES ARE RELOCATED FROM A MARYLAND
32 HEALTH CARE FACILITY OTHER THAN A HOME HEALTH AGENCY OR HOSPICE TO
33 ANOTHER MARYLAND HEALTH CARE FACILITY OTHER THAN A HOME HEALTH
34 AGENCY OR HOSPICE THAT IS OWNED BY THE SAME MULTIFACILITY PROVIDER.

35 (3) FOR PURPOSES OF THIS SUBSECTION, THE NUMBER OF HOSPITAL
36 BEDS ELIGIBLE FOR RELOCATION SHALL BE:

37 (I) FOR HOSPITALS WITH 100 OR MORE AUTHORIZED BEDS AS OF
38 JANUARY 1, 1997, 120% OF THE AVERAGE DAILY CENSUS FOR THE YEAR 1997; AND

1 (II) FOR HOSPITALS WITH FEWER THAN 100 AUTHORIZED BEDS AS
2 OF JANUARY 1, 1997, 130% OF THE AVERAGE DAILY CENSUS FOR THE YEAR 1997.

3 (h) (1) A certificate of need is required before the bed capacity of a health
4 care facility is changed.

5 (2) This subsection does not apply to any increase or decrease in bed
6 capacity if:

7 (i) During a 2-year period the increase or decrease would not
8 exceed the lesser of 10 percent of the total bed capacity or 10 beds;

9 (ii) 1. The increase or decrease would change the bed capacity
10 for an existing medical service; and

11 2. A. The change would not increase total bed capacity;

12 B. The change is maintained for at least a 1-year period; and

13 C. At least 45 days prior to the change the hospital provides
14 written notice to the Commission describing the change and providing an updated
15 inventory of the hospital's licensed bed complement; or

16 (iii) 1. At least 45 days before increasing or decreasing bed
17 capacity, written notice of intent to change bed capacity is filed with the Commission;
18 and

19 2. The Commission in its sole discretion finds that the
20 proposed change:

21 A. Is pursuant to the consolidation or merger of 2 or more
22 health care facilities, or conversion of a health care facility or part of a facility to a
23 nonhealth-related use;

24 B. Is not inconsistent with the State health plan or the
25 institution-specific plan developed by the Commission;

26 C. Will result in the delivery of more efficient and effective
27 health care services; and

28 D. Is in the public interest.

29 (3) Within 45 days of receiving notice, the Commission shall notify the
30 health care facility of its finding.

31 (i) (1) A certificate of need is required before the type or scope of any health
32 care service is changed if the health care service is offered:

33 (i) By a health care facility;

34 (ii) In space that is leased from a health care facility; or

1 (iii) In space that is on land leased from a health care facility.

2 (2) This subsection does not apply if:

3 (i) The Commission adopts limits for changes in health care
4 services and the proposed change would not exceed those limits;

5 (ii) The proposed change and the annual operating revenue that
6 would result from the addition is entirely associated with the use of medical
7 equipment;

8 (iii) The proposed change would establish, increase, or decrease a
9 health care service and the change would not result in the:

10 1. Establishment of a new medical service or elimination of
11 an existing medical service;

12 2. Establishment of an open heart surgery, organ transplant
13 surgery, or burn or neonatal intensive health care service;

14 3. Establishment of a home health program, hospice
15 program, or freestanding ambulatory surgical center or facility; or

16 4. Expansion of a comprehensive care, extended care,
17 intermediate care, residential treatment, psychiatry, or rehabilitation medical
18 service, except for an expansion related to an increase in total bed capacity in
19 accordance with subsection (h)(2)(i) of this section; [or]

20 (IV) 1. THE PROPOSED CHANGE WOULD ESTABLISH A NEW OPEN
21 HEART SURGERY SERVICE AND THE HEALTH SERVICES COST REVIEW COMMISSION
22 DETERMINES, AFTER TAKING INTO ACCOUNT ANY VOLUNTARY OR MANDATORY
23 ADJUSTMENTS IN HOSPITAL RATES, THAT THERE WILL BE A NET SAVING TO THE
24 HEALTH CARE SYSTEM AS A RESULT OF THE CHANGE IN SERVICE; AND

25 2. THE PROPOSED CHANGE WOULD BE CONSISTENT WITH
26 THE TYPE OF HEALTH CARE FACILITY LICENSE ISSUED BY THE SECRETARY UNDER
27 THIS TITLE TO THE HEALTH CARE FACILITY AND THE PROPOSED CHANGE DOES NOT
28 RESULT IN:

29 A. AN EXPANSION OF THE TOTAL NUMBER OF INPATIENT
30 BEDS IN THE FACILITY, EXCEPT FOR AN EXPANSION IN ACCORDANCE WITH
31 SUBSECTION (H)(2) OF THIS SECTION; OR

32 B. AN EXPANSION OF THE TOTAL NUMBER OF OPERATING
33 ROOMS IN THE FACILITY; OR

34 [(iv)] (V) 1. At least 45 days before increasing or decreasing the
35 volume of 1 or more health care services, written notice of intent to change the volume
36 of health care services is filed with the Commission;

1 2. The Commission in its sole discretion finds that the
2 proposed change:

3 A. Is pursuant to the consolidation or merger of 2 or more
4 health care facilities, or conversion of a health care facility or part of a facility to a
5 nonhealth-related use;

6 B. Is not inconsistent with the State health plan or the
7 institution-specific plan developed and adopted by the Commission;

8 C. Will result in the delivery of more efficient and effective
9 health care services; and

10 D. Is in the public interest; and

11 3. Within 45 days of receiving notice under item 1 of this
12 subparagraph, the Commission shall notify the health care facility of its finding.

13 (3) Notwithstanding the provisions of paragraph (2) of this subsection, a
14 certificate of need is required:

15 (i) Before an additional home health agency, branch office, or home
16 health care service is established by an existing health care agency or facility;

17 (ii) Before an existing home health agency or health care facility
18 establishes a home health agency or home health care service at a location in the
19 service area not included under a previous certificate of need or license;

20 (iii) Before a transfer of ownership of any branch office of a home
21 health agency or home health care service of an existing health care facility that
22 separates the ownership of the branch office from the home health agency or home
23 health care service of an existing health care facility which established the branch
24 office; or

25 (iv) Before the expansion of a home health service or program by a
26 health care facility that:

27 1. Established the home health service or program without a
28 certificate of need between January 1, 1984 and July 1, 1984; and

29 2. During a 1-year period, the annual operating revenue of
30 the home health service or program would be greater than $333,000 after an annual
31 adjustment for inflation, based on an appropriate index specified by the Commission.

32 (j) (1) A certificate of need is required before any of the following capital
33 expenditures are made by or on behalf of a health care facility:

34 (i) Any expenditure that, under generally accepted accounting
35 principles, is not properly chargeable as an operating or maintenance expense, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation as provided in the regulations of the Commission, the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than $1,250,000;

2. The expenditure is made as part of a replacement of any plant and equipment of the health care facility and is more than $1,250,000 after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the health care facility; or

4. The expenditure results in the establishment of a new medical service in a health care facility that would require a certificate of need under subsection (i) of this section; or

(ii) Any expenditure that is made to lease or, by comparable arrangement, obtain any plant or equipment for the health care facility, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation as provided in the rules and regulations of the Commission, the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than $1,250,000;

2. The expenditure is made as part of a replacement of any plant and equipment and is more than $1,250,000 after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the health care facility; or

4. The expenditure results in the establishment of a new medical service in a health care facility that would require a certificate of need under subsection (i) of this section.

(2) A certificate of need is required before any equipment or plant is donated to a health care facility, if a certificate of need would be required under paragraph (1) of this subsection for an expenditure by the health care facility to acquire the equipment or plant directly.

(3) A certificate of need is required before any equipment or plant is transferred to a health care facility at less than fair market value if a certificate of need would be required under paragraph (1) of this subsection for the transfer at fair market value.

(4) A certificate of need is required before a person acquires a health care facility if a certificate of need would be required under paragraph (1) of this subsection for the acquisition by or on behalf of the health care facility.

1 (5) This subsection does not apply to:

2 (i) Site acquisition;

3 (ii) Acquisition of a health care facility if, at least 30 days before
4 making the contractual arrangement to acquire the facility, written notice of the
5 intent to make the arrangement is filed with the Commission and the Commission
6 does not find, within 30 days after the Commission receives notice, that the health
7 services or bed capacity of the facility will be changed;

8 (iii) Acquisition of business or office equipment that is not directly
9 related to patient care;

10 (iv) Capital expenditures to the extent that they are directly related
11 to the acquisition and installation of major medical equipment;

12 (v) A capital expenditure made as part of a consolidation or merger
13 of 2 or more health care facilities, or conversion of a health care facility or part of a
14 facility to a nonhealth-related use if:

15 1. At least 45 days before an expenditure is made, written
16 notice of intent is filed with the Commission;

17 2. Within 45 days of receiving notice, the Commission in its
18 sole discretion finds that the proposed consolidation, merger, or conversion:

19 A. Is not inconsistent with the State health plan or the
20 institution-specific plan developed by the Commission as appropriate;

21 B. Will result in the delivery of more efficient and effective
22 health care services; and

23 C. Is in the public interest; and

24 3. Within 45 days of receiving notice, the Commission shall
25 notify the health care facility of its finding;

26 (vi) A capital expenditure by a nursing home for equipment,
27 construction, or renovation that:

28 1. Is not directly related to patient care; and

29 2. Is not directly related to any change in patient charges or
30 other rates;

31 (vii) A capital expenditure by a hospital, as defined in § 19-301 of
32 this title, for equipment, construction, or renovation that:

33 1. Is not directly related to patient care; and

34 2. Does not increase patient charges or hospital rates;

1 (viii) A capital expenditure by a hospital as defined in § 19-301 of
2 this title, for a project in excess of $1,250,000 for construction or renovation that:

3 1. May be related to patient care;

4 2. Does not require, over the entire period or schedule of debt
5 service associated with the project, a total cumulative increase in patient charges or
6 hospital rates of more than $1,500,000 for the capital costs associated with the project
7 as determined by the Commission, after consultation with the Health Services Cost
8 Review Commission;

9 3. At least 45 days before the proposed expenditure is made,
10 the hospital notifies the Commission and within 45 days of receipt of the relevant
11 financial information, the Commission makes the financial determination required
12 under item 2 of this subparagraph; and

13 4. The relevant financial information to be submitted by the
14 hospital is defined in regulations promulgated by the Commission, after consultation
15 with the Health Services Cost Review Commission; or

16 (ix) A plant donated to a hospital as defined in § 19-301 of this title,
17 which does not require a cumulative increase in patient charges or hospital rates of
18 more than $1,500,000 for capital costs associated with the donated plant as
19 determined by the Commission, after consultation with the Health Services Cost
20 Review Commission that:

21 1. At least 45 days before the proposed donation is made, the
22 hospital notifies the Commission and within 45 days of receipt of the relevant
23 financial information, the Commission makes the financial determination required
24 under this subparagraph; and

25 2. The relevant financial information to be submitted by the
26 hospital is defined in regulations promulgated by the Commission after consultation
27 with the Health Services Cost Review Commission.

28 (6) Paragraph (5)(vi), (vii), (viii), and (ix) of this subsection may not be
29 construed to permit a facility to offer a new health care service for which a certificate
30 of need is otherwise required.

31 (7) Subject to the notice requirements of paragraph (5)(ii) of this
32 subsection, a hospital may acquire a freestanding ambulatory surgical facility or
33 office of one or more health care practitioners or a group practice with one or more
34 operating rooms used primarily for the purpose of providing ambulatory surgical
35 services if the facility, office, or group practice:

36 (i) Has obtained a certificate of need;

37 (ii) Has obtained an exemption from certificate of need
38 requirements; or

1 (iii) Did not require a certificate of need in order to provide
2 ambulatory surgical services after June 1, 1995.

3 (8) Nothing in this subsection may be construed to permit a hospital to
4 build or expand its ambulatory surgical capacity in any setting owned or controlled by
5 the hospital without obtaining a certificate of need from the Commission if the
6 building or expansion would increase the surgical capacity of the State's health care
7 system.

8 (l) A certificate of need is not required to close any hospital or part of a
9 hospital as defined in § 19-301 of this title if:

10 (1) At least 45 days before closing, written notice of intent to close is filed
11 with the Commission;

12 (2) The Commission in its sole discretion finds that the proposed closing
13 is not inconsistent with the State health plan or the institution-specific plan
14 developed by the Commission and is in the public interest; and

15 (3) Within 45 days of receiving notice the Commission notifies the health
16 care facility of its findings.

17 (m) In this section the terms "consolidation" and "merger" include increases
18 and decreases in bed capacity or services among the components of an organization
19 which:

20 (1) Operates more than one health care facility; or

21 (2) Operates one or more health care facilities and holds an outstanding
22 certificate of need to construct a health care facility.

23 (n) (1) Notwithstanding any other provision of this section, the Commission
24 shall consider the special needs and circumstances of a county where a medical
25 service, as defined in this section, does not exist; and

26 (2) The Commission shall consider and may approve under this
27 subsection a certificate of need application to establish, build, operate, or participate
28 in a health care project to provide a new medical service in a county if the
29 Commission, in its sole discretion, finds that:

30 (i) The proposed medical service does not exist in the county that
31 the project would be located;

32 (ii) The proposed medical service is necessary to meet the health
33 care needs of the residents of that county;

34 (iii) The proposed medical service would have a positive impact on
35 the existing health care system;

1 (iv) The proposed medical service would result in the delivery of
2 more efficient and effective health care services to the residents of that county; and

3 (v) The application meets any other standards or regulations
4 established by the Commission to approve applications under this subsection.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
6 read as follows:

7 **Article - Health - General**

8 19-308.

9 (a) The Secretary shall adopt reasonable rules and regulations that set
10 standards of services for related institutions, nonaccredited hospitals, and
11 nonaccredited residential treatment centers in the following areas:

12 (1) The care of patients;

13 (2) The medical supervision of patients;

14 (3) The physical environment;

15 (4) Disease control;

16 (5) Sanitation;

17 (6) Safety; and

18 (7) Dietary matters.

19 (B) (1) THE SECRETARY SHALL, IN CONSULTATION WITH HOSPITALS,
20 PHYSICIANS, INTERESTED COMMUNITY AND ADVOCACY GROUPS, AND
21 REPRESENTATIVES OF THE MARYLAND DEFENSE BAR AND PLAINTIFF'S BAR, ADOPT
22 REASONABLE REGULATIONS THAT SET QUALITY OF CARE STANDARDS FOR SPECIAL
23 SERVICES OFFERED BY ACCREDITED AND NONACCREDITED HOSPITALS.

24 (2) THE SECRETARY MAY ADOPT QUALITY OF CARE STANDARDS FOR
25 SPECIAL SERVICES WHICH ARE BASED ON EXISTING LICENSING, CERTIFICATION, OR
26 ACCREDITATION REQUIREMENTS, OR MAY ESTABLISH NEW REQUIREMENTS IF, IN
27 THE SECRETARY'S JUDGMENT, EXISTING LICENSING, CERTIFICATION, AND
28 ACCREDITATION REQUIREMENTS ARE INSUFFICIENT TO ASSURE QUALITY OF CARE
29 TO PATIENTS.

30 (3) THE SECRETARY SHALL ADOPT QUALITY OF CARE STANDARDS FOR
31 OPEN HEART SURGERY BY JANUARY 1, 1999.

32 (4) IN DEVELOPING QUALITY OF CARE STANDARDS FOR OPEN HEART
33 SURGERY, THE SECRETARY SHALL CONSIDER:

1 (I) THE "GUIDELINES AND INDICATIONS FOR CORONARY ARTERY
2 BYPASS GRAFT SURGERY" APPROVED BY THE AMERICAN COLLEGE OF CARDIOLOGY
3 AND THE AMERICAN HEART ASSOCIATION;

4 (II) THE "GUIDELINES FOR STANDARDS IN CARDIAC SURGERY"
5 APPROVED BY THE AMERICAN COLLEGE OF SURGEONS; AND

6 (III) ANY REVISIONS AND UPDATES OF THOSE DOCUMENTS.

7 (5) THE SECRETARY MAY REQUEST AND COLLECT ANY STATISTICAL OR
8 OTHER INFORMATION FROM ACCREDITED AND NONACCREDITED HOSPITALS WHICH
9 THE SECRETARY DEEMS TO BE NECESSARY FOR THE DEVELOPMENT OF QUALITY OF
10 CARE STANDARDS FOR SPECIAL SERVICES OR THE MONITORING OF THE DELIVERY
11 OF SPECIAL SERVICES.

12 (6) IF AN ACCREDITED OR NONACCREDITED HOSPITAL FAILS TO
13 PROVIDE ANY STATISTICAL OR OTHER INFORMATION REQUESTED BY THE
14 SECRETARY, THE SECRETARY MAY:

15 (I) ISSUE AN ADMINISTRATIVE ORDER THAT REQUIRES THE
16 HOSPITAL TO PROVIDE THE INFORMATION;

17 (II) IMPOSE A PENALTY OF NOT MORE THAN $1,000 A DAY FOR EACH
18 DAY THE VIOLATION CONTINUES AFTER CONSIDERATION OF THE WILLFULNESS
19 AND SERIOUSNESS OF THE WITHHOLDING AND ANY PAST HISTORY OF
20 WITHHOLDING OF INFORMATION; OR

21 (III) APPLY TO THE CIRCUIT COURT IN THE COUNTY IN WHICH THE
22 HOSPITAL IS LOCATED FOR LEGAL RELIEF CONSIDERED APPROPRIATE BY THE
23 SECRETARY.

24 [(b)] (C) (1) To assure compliance with the standards adopted under this
25 subtitle, the Secretary shall have an inspection made:

26 (i) Of each related institution, each nonaccredited hospital, and
27 each nonaccredited residential treatment center for which a license is sought; and

28 (ii) Periodically of each related institution, each nonaccredited
29 hospital, and each nonaccredited residential treatment center for which a license has
30 been issued.

31 (2) An accredited hospital and an accredited residential treatment center
32 shall be subject to inspections under this subtitle by the Department for:

33 (i) A complaint investigation in accordance with § 19-309 of this
34 part; [or]

35 (ii) Reviewing compliance with a written progress report or other
36 documentation of corrective action in response to a focused survey submitted by the
37 hospital or residential treatment center to the Joint Commission on Accreditation of

1 Healthcare Organizations in response to a Type I finding that the hospital or
2 residential treatment center is only in partial compliance with the patient care
3 standards established by the Joint Commission on Accreditation of Healthcare
4 Organizations; OR

5 (III) REVIEWING COMPLIANCE WITH STANDARDS FOR SPECIAL
6 SERVICES UNDER SUBSECTION (B) OF THIS SECTION.

7 (3) In addition to other provisions of this subsection, an accredited
8 hospital shall be subject to inspections under this subtitle by the Department for
9 reviewing compliance with licensure requirements for risk management, utilization
10 review, and physician credentialing under § 19-319 of this subtitle.

11 (4) When conducting an inspection of an accredited hospital or
12 accredited residential treatment center, the Department shall use the current
13 applicable standards of the Joint Commission on Accreditation of Healthcare
14 Organizations AND ANY APPLICABLE STANDARDS FOR SPECIAL SERVICES ADOPTED
15 BY THE SECRETARY UNDER SUBSECTION (B) OF THIS SECTION.

16 (5) At least 2 inspections a year of each related institution shall be
17 unannounced.

18 (6) The part of a building that contains part of a hospital, residential
19 treatment center, or related institution and any outbuilding are considered part of the
20 facility and are subject to inspection to determine occupancy status for licensing
21 purposes.

22 (7) Subject to § 2-1246 of the State Government Article, during each
23 regular session of the General Assembly, the Department shall submit to the General
24 Assembly a report on the inspections.

25 (8) (i) An employee of the Department may not inform a hospital,
26 residential treatment center, or related institution of any proposed inspection activity,
27 unless the chief of the employee's division directs the employee to do so.

28 (ii) An employee who violates any provision of this paragraph is
29 guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or
30 imprisonment not exceeding 1 year or both.

31 (D) IF AN ACCREDITED OR NONACCREDITED HOSPITAL FAILS TO COMPLY
32 WITH REGULATIONS ADOPTED UNDER SUBSECTION (B) OF THIS SECTION, THE
33 SECRETARY MAY, IN ADDITION TO ANY OTHER PENALTIES UNDER THIS SUBTITLE:

34 (1) ISSUE AN ADMINISTRATIVE ORDER THAT REQUIRES COMPLIANCE
35 WITH REGULATIONS;

36 (2) IMPOSE A PENALTY OF NOT MORE THAN $10,000 A DAY FOR EACH
37 DAY THE VIOLATION CONTINUES AFTER CONSIDERATION OF THE WILLFULNESS
38 AND SERIOUSNESS OF THE VIOLATION AND ANY PAST HISTORY OF VIOLATIONS;

1 (3) ISSUE AN ADMINISTRATIVE ORDER THAT PROHIBITS THE HOSPITAL
2 FROM ADMITTING DESIGNATED TYPES OF PATIENTS WHO, IN THE SECRETARY'S
3 JUDGMENT, ARE ADVERSELY AFFECTED BY THE FAILURE TO COMPLY WITH THE
4 REGULATIONS;

5 (4) ISSUE AN ADMINISTRATIVE ORDER THAT PROHIBITS THE HOSPITAL
6 FROM PROVIDING DESIGNATED TYPES OF SERVICES WHICH, IN THE SECRETARY'S
7 JUDGMENT, ARE ADVERSELY AFFECTED BY THE FAILURE TO COMPLY WITH THE
8 REGULATIONS; OR

9 (5) APPLY TO THE CIRCUIT COURT IN THE COUNTY IN WHICH THE
10 HOSPITAL IS LOCATED FOR LEGAL RELIEF CONSIDERED APPROPRIATE BY THE
11 SECRETARY.

12 [(c)] (E) (1) An accredited hospital or accredited residential treatment
13 center shall submit the survey findings of the Joint Commission on Accreditation of
14 Healthcare Organizations within 30 days of receipt by the hospital or the residential
15 treatment center to the Department.

16 (2) Except as provided in paragraph (5) of this subsection, an accredited
17 hospital's or accredited residential treatment center's official accreditation report and
18 any summary of the report, written progress reports, or plans of correction which are
19 submitted to the Secretary are confidential and are not discoverable or admissible as
20 evidence in any civil action.

21 (3) ANY STATISTICAL OR OTHER INFORMATION SUBMITTED BY A
22 HOSPITAL UNDER SUBSECTION (B) OF THIS SECTION IN CONNECTION WITH
23 STANDARDS FOR SPECIAL SERVICES IS CONFIDENTIAL AND IS NOT DISCOVERABLE
24 OR ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION.

25 [(3)] (4) The Secretary shall refer any request for public inspection of a
26 survey report made by the Joint Commission on Accreditation of Healthcare
27 Organizations for an accredited hospital or accredited residential treatment center
28 directly to the hospital or residential treatment center.

29 [(4)] (5) Upon the written request of any person, within 15 working
30 days, the accredited hospital or accredited residential treatment center shall make
31 available for public inspection the most recent accreditation letter and any Type I
32 recommendations if the Joint Commission on Accreditation of Healthcare
33 Organizations has made a final decision on any appeal by the hospital or residential
34 treatment center of the Type I recommendations.

35 [(5)] (6) If information is released in accordance with paragraph (4) of
36 this subsection, that information is no longer confidential, but is not discoverable or
37 admissible in any civil action.

38 [(6)] (7) An accreditation report, including any summary of the report
39 and any information contained in the report, disclosed by a hospital or residential
40 treatment center, the Joint Commission on the Accreditation of Healthcare
41 Organizations, or the Department is not admissible or discoverable in any civil action.

1 [(7)] (8) If an accredited hospital or accredited residential treatment
2 center willfully fails to comply with the provisions of this subsection, the Secretary
3 may impose a penalty not to exceed $1,000 a day for each day the violation continues.
4 19-309.

5 (a) Notwithstanding any other provisions of this subtitle, each hospital or
6 residential treatment center shall be open to inspections by the Department to
7 investigate and resolve any complaint concerning patient care, safety, medical and
8 nursing supervision, physical environment, sanitation or dietary matters.

9 (b) (1) To resolve expeditiously a complaint that alleges the existence of any
10 nonlife-threatening deficiency, the Department may refer the complaint directly to
11 the hospital or residential treatment center.

12 (2) If appropriate, issues relating to the practice of medicine or the
13 licensure or conduct of a health professional shall be referred to the hospital or the
14 residential treatment center and may be referred to the appropriate licensure board
15 for resolution.

16 (3) If the Department determines that the hospital or residential
17 treatment center has not satisfactorily addressed the referred complaint or where the
18 complaint alleges the existence of a life-threatening deficiency, the Department shall
19 conduct an independent investigation. When conducting its independent
20 investigation, the Department shall use:

21 (i) For an accredited hospital or accredited residential treatment
22 center, the current applicable standards of review of the Joint Commission on
23 Accreditation of Healthcare Organizations AND ANY APPLICABLE STANDARDS FOR
24 SPECIAL SERVICES ADOPTED BY THE SECRETARY UNDER § 19-308(B) OF THIS
25 SUBTITLE;

26 (ii) For a nonaccredited hospital or nonaccredited residential
27 treatment center, the standards adopted by the Secretary under this subtitle;

28 (iii) For an accredited or nonaccredited hospital that is a facility as
29 defined under § 19-319.2 of this subtitle, the requirements of §§ 10-701 through
30 10-709 of this article; and

31 (iv) For an accredited or nonaccredited residential treatment center,
32 the requirements of §§ 10-701 through 10-709 of this article.

33 SECTION 3. AND BE IT FURTHER ENACTED, That the changes made by this
34 Act to Title 19, Subtitle 1 of the Health - General Article do not apply to ambulatory
35 surgical facilities established pursuant to a determination by the Maryland Health
36 Resources Planning Commission as to whether a certificate of need is required to
37 build a new ambulatory surgical facility, if the facility requested or received the
38 determination on or before February 13, 1995.

1 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 and Section 3 of
2 this Act shall take effect January 1, 1999.

3 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
4 take effect July 1, 1998.